



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

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Docket No: 1813-22
Ref: Signature Date

[REDACTED]
[REDACTED]
[REDACTED]

Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session, considered your application on 13 July 2022. The names and votes of the panel members will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your naval record, and applicable statutes, regulations, and policies, to include the SECDEF Memo of 3 September 2014 (Hagel Memo), USD Memo of 25 August 2017 (Kurta Memo), and USD Memo of 25 July 2018 (Wilkie Memo). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional dated 10 May 2022, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you did not do so.

You previously applied to this Board for an upgrade to your characterization of service and were denied on 30 May 1980. Subsequently, you submitted an additional application in 1987 and, after a review of that application, it was administratively closed after a determination that your application did not contain any new material evidence that was not previously considered by the Board. Before this Board's denial, the Naval Discharge Review Board also denied your request for relief on 28 October 1970.

You enlisted in the Marine Corps and began a period of active duty on 5 April 1966. On 13 January 1967, you were convicted by a summary court-martial (SCM) of unauthorized absence (UA) totaling 31 days. During the period from 24 May 1967 to 13 June 1968, you received five instances of non-judicial punishment (NJP). Your offenses were two periods of

UA totaling seven days, dereliction in the performance of duty, failure to check in off liberty, and failure to go to your appointed place of duty on two occasions. On 5 August 1968, you were convicted by a special court-martial (SPCM) of three specifications of UA totaling 30 days and escaping from lawful confinement. As punishment, you were sentenced to confinement, reduction in rank, forfeiture of pay, and a Bad Conduct Discharge (BCD), which was suspended for a period of six months. On 29 April 1969, you were fined \$100 by a civilian court for leaving the scene of accident. On 4 June 1969, you were again convicted by a SPCM of four specifications of UA totaling 36 days, escaping from lawful custody and breaking restriction. As punishment, you were sentenced to confinement, forfeiture of pay and a BCD. The BCD was subsequently approved at all levels of review and, on 28 October 1969, you were so discharged.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your supporting documentation, your desire to upgrade your discharge character of service and contentions that you incurred PTSD and alcohol use disorder during your military service in Vietnam and these were related to your UA periods. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 10 May 2022. The AO stated in pertinent part:

There is no evidence that he was diagnosed with PTSD or another mental health condition in military service. He has provided no medical evidence in support of his claims. Unfortunately, his statement is insufficient to establish a clinical diagnosis or a nexus with his misconduct. There is evidence in his record of a combat injury, and it is possible that his misconduct following his return from Vietnam could be related to unrecognized PTSD avoidance symptoms. However, it is difficult to make that attribution with the available evidence, given his history of repeated UA prior to deployment. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, “[b]ased on the available evidence, it is my clinical opinion that there is insufficient evidence of a diagnosis of PTSD. There is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to PTSD or another mental health condition.”

Based upon this review, the Board concluded that your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct as evidenced by your five NJPs, SCM conviction and two SPCM convictions, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded it showed a complete disregard for military authority and regulations. The Board further concluded that the discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your BCD. Additionally, the Board concurred with the AO and

determined that there is insufficient evidence of a diagnosis of PTSD, there is insufficient evidence of a mental health condition that may be attributed to military service, and there is insufficient evidence that your misconduct may be attributed to PTSD or another mental health condition. In making this finding, the Board also considered the nature of your misconduct that included multiple incidents of escaping custody and breaking restriction. The Board found no reasonable nexus between these incidents of serious misconduct and your asserted mental health or intoxication arguments. Finally, the Board noted that the Marine Corps offered you multiple opportunities to correct your conduct deficiencies, including the receipt of a suspended BCD. Based on this evidence, the Board determined you already received a large measure of clemency for your misconduct. As a result, the Board determined your conduct constituted a significant departure from that expected of a Marine and continues to warrant a BCD characterization. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service. Accordingly, given the totality of the circumstances, the Board determined your request does not merit relief.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

7/27/2022

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Deputy Director

Signed by: ■